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Hearing Opened: May 10, 2002
Staff: Jim Baskin
Staff Report: October 23, 2003
Hearing Date: November 6, 2003
Commission Action:

STAFF REPORT: APPEAL

DE NOVO HEARING

APPEAL NO.:	**A-1-MEN-02-019**
APPLICANT:	**Torben Moller & Laura Jean Spurrier**
AGENT(S):	Bud Kamb
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	44696 Crestwood Drive (and adjoining forest land), approximately ¼ mile east of its intersection with Highway One, Mendocino (APN 119-370-10 and 104-012-04).
PROJECT DESCRIPTION:	Construct a 1,680-square-foot single-family residence with an average maximum height of 28 feet above finished grade, install a driveway, Wisconsin mound septic system with a curtain drain, and connect to the Big River Vista Mutual Water Company.
APPELLANT:	**Sierra Club, Redwood Chapter – Attn: Dr. Hillary Adams**
SUBSTANTIVE FILE: DOCUMENTS	1) Mendocino County CDP No. 39-00; and 2) County of Mendocino Local Coastal Program.

STAFF NOTES:

1. Procedure.

On May 10, 2002, the Coastal Commission found that the appeal of the County of Mendocino's approval raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 30625 of the Coastal Act and Section 13115 of Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is within the area between the first public road and Big River, an arm of the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the County's certified LCP and the public access and public recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

2. Submittal of Additional Information by the Applicant.

For the purposes of *de novo* review by the Commission, the applicant has provided Commission staff with supplemental information consisting of: 1) a riparian ESHA width evaluation prepared by a consulting biologist with recommendations for ESHA protection; 2) a wetlands delineation and ESHA width evaluation prepared by a consulting biologist with recommendations for ESHA protection; and 3) information regarding the scale and bulk of other development in the Big River and Van Meter Subdivisions neighborhood area. The applicants have also amended their project description by revising their site plan to: 1) move the house approximately 50 feet toward the north to conform to the minimum 50-foot-wide wetlands buffer setback required by the LCP; 2) move the parking area approximately 25 feet toward the east to conform to the minimum 50-foot-wide wetlands buffer setback required by the LCP; and 3) include a proposal to protect all remaining Bolander's Reed Grass outside of the approved building envelope.

The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit

3. Change in Rare Plant Status.

Portions of the project site are covered by Bolander's Reed Grass (Calamagrostis bolanderi). At the time of the Commission's action on the appeal of the County's conditional approval of the project, Bolander's Reed Grass appeared on the California Native Plants Society's (CNPS) "List 1B," as a rare plant species vulnerable under present circumstances or to have a high potential for becoming so because of its limited or vulnerable habitat, its low numbers of individuals per population (even though they may be wide ranging), or its limited number of populations. Consequently, the plant met the definition as a "threatened" or "endangered" species and at that time was eligible for listing as such under the California Endangered Species Act (CESA).

Additionally, given this status, the plant and the area in which it grows also met the definition within the County of Mendocino's LCP as an "environmentally sensitive habitat area," and was subject to the protections enumerated therein (i.e., providing adequately wide buffer areas from development and other similar preclusions).

Since the Commission's Substantial Issue determination in May 2002, Bolander's Reed Grass has been downgraded by the CNPS to "List 4" status, reflecting the receipt of additional botanical field data that found the plant to be in greater population occurrence and range than had been previously thought. CNPS List 4 is effectively a "watch list," comprising those rare plants which are of limited distribution or infrequent throughout a broader area in California, and their vulnerability or susceptibility to threat appears relatively low at this time. These plants cannot be considered "rare" from a statewide perspective and therefore are not eligible for CESA candidacy as a "threatened" or "endangered" species. As a result, with the re-listing of Bolander's Reed Grass from a designation associated with critical concerns regarding possible and eventual extirpation to one which is effectively an advisory ranking, the plant and its habitat no longer meet the LCP's definition of a "environmentally sensitive habitat area" for purposes of implementing the LCP's ESHA policies (i.e., restrictions on development within ESHAs, provision of adequately-wide buffer areas between development and ESHAs).

SUMMARY OF STAFF RECOMMENDATION *DE NOVO*: APPROVAL WITH CONDITIONS

The staff recommends that the Commission approve with conditions the coastal development permit for the proposed project on the basis that, as conditioned by the Commission, the project is consistent with the County of Mendocino certified LCP and the access policies of Chapter 3 of the Coastal Act.

Since the May 2002 hearing on the Substantial Issue determination, the applicant has provided considerable additional information on the effects of the project on coastal resources. Further biological assessments have been presented. Furthermore, the applicant has provided information as to the development pattern within the areas adjoining the project site to assist staff in assessing the consistency of the proposed development's scale and scope with the character of its surroundings. Moreover, based upon the findings of the recent biological investigations, the applicants have amended the permit application, for purposes of the Commission's hearing *de novo* on the project to relocate all of the proposed development out of the currently existing environmentally sensitive habitat areas (ESHAs) on the parcel and provide appropriate buffers between the site improvements and these sensitive areas, as required by the County LCP.

Two types of environmentally sensitive habitat areas (ESHAs) are found on the proposed development site, including a riparian drainage corridor and a small isolated wetland. In addition, though not meeting the definition of a "threatened" or "endangered" species and, therefore, not an ESHA, an outcropping of rare Bolander's Reed Grass also flanks one side of the property. The parcel's irregular parcel shape, together with the extent and location of the two environmentally sensitive habitat areas and their buffer areas and other encumbered portions of

the property significantly reduce the potential structural building envelope of this nearly 1¼-acre parcel to a roughly triangular 3,700-square-foot area at the mid-center of the parcel (see Exhibit No. 3). The staff has determined that the proposed project, as amended for purposes of the Commission's hearing *de novo* review, to relocate all of the proposed development out of the ESHAs on the property and provide appropriate buffers, would be consistent with the habitats and natural resources policies and provisions of the certified LCP requiring that new development establish buffer areas adjacent to all environmentally sensitive habitat areas to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments.

Staff is recommending other special conditions to ensure the project's consistency with all other applicable policies of the County's certified LCP and the Coastal Act. The principal recommended conditions would require the applicant to construct the proposed site improvements consistent with an approved final development plan, incorporating appropriate erosion control and runoff best management practices to protect water quality. Restrictions on the choice of exterior building materials, colors, and lighting elements have also been recommended to ensure that the exterior appearance of the development is compatible with the project's surrounding.

Special Condition No. 1 requires the submittal of final site plans showing the proposed development setback a minimum of 50 feet from the outer edge of riparian corridor vegetation and wetlands on the parcel. In addition, the routing of the driveway to avoid certain environmentally sensitive areas and their buffer areas and provisions for implementing the applicants' rare plant conservation plan have been specified to be detailed on the final plans. These final construction and site drainage plans shall incorporate all recommendations of the submitted biological study intended to avoid creating or contributing impacts to ESHAs and implement the conservation measures proposed by the applicants to protect rare plants on the site and identify appropriate construction phase and long-term best management practices for reducing significant adverse impacts to the water quality impacts of adjoining coastal waters.

Special Condition No. 2 requires the applicants to submit for the approval of the Executive Director, a landscaping and vegetation maintenance plan requiring the applicant to maintain the patches of rare plants they intend to conserve in the areas outside of the approved building envelope and ensure that no invasive exotic vegetation is planted on the parcel that could spread into and significantly disrupt the value of the protected wetland and riparian ESHAs or further reduce the presence of rare plants being conserved on the site. In addition, the condition calls for the planting of native vegetation within the reduced-width wetlands ESHA buffer to further insulate the resource area from impacts from the residential uses on the parcel.

Special Condition No. 3 sets design standards for the exterior building materials and lighting to ensure that the development is compatible with the character of its surroundings and subordinate to its setting such that coastal visual resources are protected.

Special Condition No. 4 requires that all terms and conditions of the permit be recorded as deed restrictions.

Staff recommends that the Commission find the project, as conditioned, is consistent with the policies contained in the County's certified LCP and the Coastal Act public access and recreation policies.

MOTION, STAFF RECOMMENDATION *DE NOVO*, AND RESOLUTION:

Motion:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-02-019 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development, as conditioned will be in conformity with the certified County of Mendocino LCP, is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

I. STANDARD CONDITIONS: See attached.

II. SPECIAL CONDITIONS:

1. Revised Site and Erosion & Runoff Control Plans

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-02-019**, the applicant shall submit revised site, and erosion & runoff control plans to the Executive Director for review and approval. The revised plans shall substantially conform with the site plan submitted to the Commission on September 17, 2003 as "Exhibit C," except that the plans shall also provide for the following changes to the project:

1) Site Plan Revisions

a. All structural improvements, including the proposed residence, garage, septic tank, and leach field for the on-site wastewater treatment system, and any construction staging and materials storage areas shall be setback at least fifty (50) feet from the edge of the riparian vegetation along the northwestern side of the project parcel, and from the wetland areas on the southern portions of the parcel, as delineated by Wetlands Research Associates, Inc. in their August 2003 biological study. In addition, the above-grade improvements shall be set back at least six (6) feet from side property lines, and at least twenty (20) feet from the front and rear property lines;

b. The driveway serving the residential use shall be routed through the riparian vegetation buffer area and not encroach into either the riparian vegetation ESHA or into the wetlands ESHA or its buffer area. Utility connections to serve the residential use shall be co-located along the side of the driveway; and

c. Areas of Bolander's Reed Grass (Calamagrostis bolanderi) located to the northwest and southeast of the approved building envelope, driveway access route, and utility extensions shall remain open and free of development, including the placement of permit-exempt accessory structures, site landscaping, and other ancillary improvements associated with the residential use, consistent with the proposed project description.

2) Erosion and Runoff Control Plan

a. The Erosion and Runoff Control Plan shall incorporate design elements and/or Best Management Practices (BMPs) which will serve to minimize the volume and velocity of stormwater runoff leaving the developed site, and to capture sediment and other pollutants contained in stormwater runoff from the development, by facilitating on-site infiltration and trapping of sediment generated from construction. The final drainage and runoff control plans shall at a minimum include the following provisions:

1. A physical barrier consisting of silt fencing and/or bales of straw placed end to end shall be installed between any construction and: (1) the edge of the riparian plant community along the property's northwestern side; and (2) areas of Bolander's Reed Grass (Calamagrostis bolanderi) outside of the approved building, parking, and driveway envelope. The bales shall be composed of weed-free rice straw, and shall be maintained in place throughout the construction period;

2. Vegetation at the site shall be maintained to the maximum extent possible and any disturbed areas shall be replanted or seeded with native vegetation immediately following project completion;

3. Provide that runoff from the roof, driveway and other impervious surfaces from the completed development shall be collected and directed into pervious areas on the site for infiltration to the maximum extent practicable in a non-erosive manner, prior to entry into the unnamed drainage course of the parcel's northeastern side. Where gutters and downspouts are used, velocity reducers shall be incorporated, to prevent scour and erosion at the outlet;

4. Soils grading activities shall be restricted to the drier-months period between May 1 and October 31; and

5. The washing-out of concrete delivery vehicles, disposal of solid waste, or release of any hazardous materials in the reduced-width wetlands buffer area shall be prohibited, and any accidental spill of such materials shall be promptly cleaned up and restored.

B. The permittee shall undertake development in accordance with the approved site and erosion & runoff control plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved site plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. <u>Landscape Plan</u>

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-02-019**, the applicant shall submit, for the review and approval of the Executive Director, a plan for landscaping to ensure the viability and biological productivity of areas located outside of the approved building site. The plan shall be prepared by a licensed landscape architect.

1. The plan shall demonstrate that:

(a) The planting of non-native invasive plants at the project site will be prohibited;

(b) The initial removal of all Scotch broom (<u>Cytisus scoparius</u>) and pampas grass (<u>Cortaderia jubata</u>) on the project site as proposed by the applicants and recommended by the California Department of Fish and Game to protect the integrity of habitat afforded by the reduced-width ESHA buffers will be undertaken;

(c) Consistent with the proposed project description, areas to the north and south of the approved building site containing patches of Bolander's Reed Grass (Calamagrostis bolanderi) shall be maintained as "rare plant conservation areas" and not developed, landscaped, or otherwise encroached into by the residential use; and

(d) Following completion of construction, a minimum of twelve (12) California wax-myrtle (Myrica californica) and twelve (12) California blackberry (Rubus ursinus) 5-gallon container plants shall be planted on ten-foot (10′) centers within the wetland buffer area, arranged in such a manner to form a landscaped strip between the residence, its parking areas and driveway, and the wetland.

2. The plan shall include, at a minimum, the following components:

(a) A map showing the type, size, and location of all plant materials that will be retained or installed on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and

(b) Appropriately worded landscaping plan notes, declaring that:

(1) "No non-native invasive plants shall be planted at the project site."; and

(2) "All areas located outside of the approved building site containing patches of Bolander's Reed Grass (Calamagrostis bolanderi) shall be maintained as 'rare plant conservation areas' and not developed, landscaped, or otherwise encroached into by residential uses or site improvements."

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Design Restrictions

A. All exterior siding of the proposed structures shall be composed of natural or natural appearing materials, and all siding and roofing of the proposed structures shall be composed of materials of dark earthtone colors only. The current owner or any future owner shall not repaint or stain the house with products that will lighten the color the house as approved. In addition, all exterior materials, including roofs and windows, shall be non-reflective to minimize glare; and

B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress and egress of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will shine beyond the boundaries of the subject parcel.

4. Deed Restriction.

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-02-019, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Conditions Imposed By Local Government.

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated April 19, 2002.

B. Project History / Background.

On April 26, 2000, Bud Kamb, agent-of-record for Torben Moller & Laura Jean Spurrier, submitted Coastal Development Permit Application No. 39-00 to the Mendocino County Planning and Building Services Department for a coastal development permit seeking authorization to construct a 1,680-square-foot single-family residence with an average maximum height of 28 feet above finished grade and installation of a driveway, "Wisconsin mound" septic system with a curtain drain, and connection to the Big River Vista Mutual Water Company on an

approximately 1¼-acre parcel, located near the southeast boundary of the Town of Mendocino, approximately ¼ mile east of Highway One on a private lane extension of Crestwood Drive (County Road 407RR).

The project had originally been approved by the County under CDP #06-97; however, the permit expired on March 11, 2000 prior to the commencement of any construction activities. On February 28, 2002, the Coastal Permit Administrator for the County of Mendocino approved a Standard Coastal Development Permit (CDP #39-00) for the subject development with two special conditions (see Exhibit No. 6).

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on March 27, 2002 (Exhibit No. 5).

On April 2, 2002, the Commission received an appeal of the County's decision to approve the development from Dr. Hillary Adams, representing the Sierra Club – Redwood Chapter. The appeal alleged that the manner in which the County of Mendocino conditionally approved the project did not effectively ensure: (1) the establishment of an adequate buffer between the approved development and environmentally sensitive habitat areas on the site; (2) minimization of potentially significant adverse impacts on water quality from site drainage; and (3) identification and protection of apparent pygmy soils at the site. The full text of the appellant's contentions is included as Exhibit No. 7.

On May 10, 2002, the Commission found that a Substantial Issue had been raised with regard to the consistency of the project as approved and the applicable policies of the LCP concerning the provisions of adequately wide buffers between new development and environmentally sensitive areas.

The Commission continued the *de novo* portion of the appeal hearing so that the applicant could provide additional information relating to the substantial issue. Supplemental biological assessments as the extent of all ESHA types on the project site and evaluations of the adequacy of the proposed buffers were subsequently provided to the Commission. From the results of these studies, the applicants also amended the project for purposes of the Commission's hearing *de novo* to respond to the most current scientific information and regulatory status of the affected environmentally sensitive areas on the site. These project modifications primarily involved moving the building site further to the east-northeast from the County-approved location to one that would provide the 50-foot minimum buffer width between both riparian vegetation and wetlands ESHAs and the development, as required by the LCP.

C. Project and Site Description.

1. Project Setting

The project site comprises Parcel 3 of the Van Meter Subdivision, created by parcel map in 1975. The subject property is a vacant, 1.24-acre parcel located in a rural residential area located north

of Big River near the southeast boundary of the town of Mendocino (APN 119-370-10). The site is located approximately ¼ mile east of Highway One, on a private lane extension of Crestwood Drive (County Road 407RR). Together with the 19 lots that comprise the adjoining Big River Vista Subdivision to the west, the site is one of 23 hillside lots developed on the upper northern banks of the lower Big River canyon, extending approximately ½ mile east of the Mendocino townsite (see Exhibit No. 2).

Immediately adjacent to the east of the applicants' parcel where the residence would be constructed, the applicants have obtained a roughly ½-acre (138.50′ x 168.50′) easement area in which development of the septic disposal leachfield serving the residence would be constructed. The septic disposal easement area is designated Forest Land (FL) under the LCP. This property was recently purchased by the California Parks and Recreation Department as part of the Big River Acquisition Area. The easement area is not located near any existing or proposed trails or roads, and, because of the presence of thick vegetation surrounding area, is not visible from any public viewing areas.

The roughly triangular-shaped residential property is approximately 1¼ acre in size and, along with the adjoining septic disposal easement area on the neighboring forestlands, consists of a moderately sloping, logged-over, grass-covered hillside lot with a well-developed riparian corridor running along the parcel's northwestern side. Plant cover on the parcel consists of a mixture of native and exotic upland and hydrophytic grasses, forbs, and shrubs on the cleared portions, including sweet vernal grass (Anthoxanthum odoratum), velvet grass (Holcus lanatus), pampas garass (Cortaderia selloana), hedge nettle (Stachys ajugoides), California blackberry (Rubus ursinus), foxglove (Digitalis purpurea), blue elderberry (Sambucus mexicana), soft rush (Juncus effuses var. brunneaus), scoth broom (Cytisus scoparius), hairgrass (Deschampsia cespitosa ssp. holciformis), goose grass (Gallium aparine), and red alder (Alnus rubra). The property is flanked along its northwestern side, by a thicket of North Coast coniferous forest and Bishop pine community plants including, Bishop pine (Pinus muricata), tan oak (Lithocarpus densiflorus), California wax-myrtle (Myrica californica), red alder, and cascara (Rhamnus purshiana), with an understory composed of braken fern (Pteridium aquilinum), sword fern (Polystichum minutum), thimbleberry (Rubus parviflorus) giant horsetail (Equisetum telmateia), skunk cabbage (Lysichiton americanum) trout lily (Scoliopus bigelovii), and sugar scoops (Tiarella trifoliata var. unifoliata). In addition, the project site also provides habitat for Bolander's Reed Grass (Calamogrostis bolanderi), listed by the California Native Plant Society's (CNPS) as "Class 4" rare plant species, both within the riparian corridor vegetation and in a linear patch following a drainage swale at the base of the cutbank on the property's eastern side.[1]

The project site lies within the LCP's Russian Gulch and Van Damme State Park Planning Area. The subject property is designated in the Land Use Plan and on the Coastal Zoning Map as Rural Residential (RR). The subject property is not within a designated highly scenic area (see Exhibit

[1] At the time of the filing of the appeal, Bolander's Reed Grass appeared on the CNPS' "1B" list. For a further discussion of the significance of a plant species being enumerated on the various CNPS rare plant lists, and their status with respect to meeting the LCP definition of an "environmentally sensitive habitat area," refer to Staff Note No. 3, on pages 2-3.

Nos. 2, 3 and 4). Due to the property's location on a private road well inland from the coastline, no public views are afforded to and along the ocean across the property. Additionally, given the distance to the highway and the presence of the forested hillside vegetation lying between the coast and project parcel, views of the site from either public roads rights-of-way or other public recreational areas are limited to the distant offshore area within Mendocino Bay, a popular sea kayaking area, located at the mouth of Big River immediately south of Mendocino Headlands State Park. Notwithstanding the project parcel's relatively inland location, the site is located with the area between the first public road and the sea for purposes of reviewing the project's effects on coastal access.[2]

2. Project Description

As approved by the County, the development would have consisted of a 28-foot-high, 1,680-square-foot, partial two-story, single-family residence with exterior decking, and a 900-square-foot detached graveled parking area. As approved by the County, the residence and parking would have been located at the top-center of the rectangular lobed portion of the lot, where a driveway would have been routed in from the existing private lane that runs along the parcel's western side. A new "Wisconsin mound" septic system and an up-slope curtain drain would have been installed on the adjoining forestlands easement area to serve the proposed three-bedroom residence.

For the purposes of the Commission's *de novo* review, the project was subsequently revised by the applicants to: 1) relocate the new residence and parking area approximately 50 feet northward and 25 feet to the east, respectively, from the wetlands on the southwest quarter of the parcel so that a minimum 50-foot-wide ESHA buffer as required by the LCP would be provided; 2) include provisions for protecting remaining Bolander's Reed Grass located outside of the approved building envelope for the house, parking area, septic system, and driveway.

The amended development proposal continues to entail the construction of a 1,680-square-foot, 28-foot-height, one- to two-story residence with a graveled 900-square-foot parking area, and an individual septic disposal system (see Exhibit No. 3). The house and parking area are now proposed to be built in the mid-center of the parcel with the closest point of the house and parking pad located a minimum of fifty feet from the riparian vegetation and wetland areas on the parcel. Water service would be provided to the residence by the Big River Vista Mutual Water Company. The development's "Wisconsin mound" sewage disposal system and associated curtain drain would be sited within a rectangular, roughly ½-acre easement area obtained from an adjacent property owner immediately to the east of the applicant's parcel. The applicants also proposed to keep all remaining areas containing Bolander's Reed Grass on the property outside of the building envelopes for the proposed site improvements in their natural state as conservation areas for these rare plants.

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[2] Coastal Act Section 30115 includes within its definition of "sea" rivers subject to tidal action through any connection to the Pacific Ocean (i.e., the tidally-influenced portions of lower Big River flanking to project site to the south). See Findings Section IV.G.2 for a further discussion of the project's effects on public coastal access.

D. Planning and Locating New Development.

1. LCP Provisions

LUP Policy 3.9-1 of the Mendocino County Land Use Plan states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

LUP Policy 3.8-1 states that Highway 1 capacity, availability of water and sewage disposal system and other know planning factors shall be considered when considering applications for development permits.

The subject property is zoned in the Mendocino Town Plan appendix to the County of Mendocino's LCP as Mendocino Rural Residential (MRR). Mendocino Town Zoning Code (MTZC) Chapter 20.644 establishes the prescriptive standards for development within Rural Residential (MRR) zoning districts. Single-family residences are a principally permitted use in the MRR zoning district. Setbacks for the subject parcel are twenty feet to the front and rear yards, and six feet on the side yards, pursuant to MTZC Sections 20.644.030 and 20.644.035, respectively. MTZC Sec. 20.644.040 limits building heights to 28 feet above natural grade. MTZC Section 20.644.050 sets a maximum of 20% structural coverage on RR lots of less than two acres in size.

The adjoining parcel on which the septic systems leachfield would be developed is zoned Forest Lands (FL). Construction of the septic system would constitute a form of single-family residential use, a principal permitted use within the FL zoning district. Coastal Zoning Code (CZC) Section 20.510.020 further requires that development of new residential dwellings occurring adjacent to lands designated as FL or TP be located no closer than two hundred (200) feet from a parcel designated as FL or TP unless there is no other feasible building site on the parcel.

2. Discussion

The proposed residence would be constructed within an existing developed residential area known as the Van Meter Subdivision. The proposed single-family residential use is consistent with the Rural Residential zoning for the site. The subject parcel, created in 1975 before adoption of the County's coastal zoning regulations, is a legal parcel of approximately 1.24-acre in size. The applicants propose to construct a total floor area of 1,680 square feet of single-family residential structural improvements, which, with the proposed deck area, represents approximately 1,450 square feet or approximately 10% lot coverage. The proposed maximum building height is 28 feet. The proposed residence's location, lot coverage and building height are consistent with the standards for the zoning district.

Although the parcel lies just within the Mendocino City Community Services District, the project site is located over ¼-mile from the nearest district water supply or sanitary sewer line. The proposed development would be served by an off-site community water supply system operated by the Big River Vista Mutual Water Company. Sewage would be processed by a proposed individual disposal system, whose "Wisconsin mound" disposal field would be developed within a roughly ½-acre easement area on an adjoining Forest Lands-zoned parcel to the east of the applicant's. The system's design has received a preliminary approval "clearance" letter from the Mendocino County Department of Public Health's Division of Environmental Health (see Exhibit No. 10, page 3). Therefore, the proposed development is consistent with the LUP and Zoning designations for the site and would be constructed within an existing developed area consistent with applicable provisions of LUP Policy 3.9-1.

Use of the site as a single-family residence is envisioned under the certified LCP. The cumulative impacts on traffic capacity of development approved pursuant to the certified LCP on lots recognized in the certified LCP were addressed at the time the LCP was certified. Further, the proposed development would meet the prescriptive standards for development within its rural residential zoning district in terms of height, bulk, and coverage, and demonstrated water and wastewater infrastructure. Therefore, the proposed development is consistent with the LUP and Coastal Zoning Code designations for the site, would be constructed within an existing developed rural residential area, and would not adversely impact transportation or public service infrastructure capacities consistent with applicable provisions of LUP Policies 3.9-1 and 3.8-1, respectively.

Finally, with regard to locating a new residential dwelling a minimum of 200 feet from FL-zoned lands, given both the size of the subject parcel and the presence and extent of ESHA at the site, no feasible location exists on the project site to allow for providing such a setback. The entire 672-foot northwestern side of the property is flanked by a 60- to 100-foot wide band of riparian vegetation. The parcel's southern rectangular lobe is similarly occupied by a 20- to 60-foot-wide band of emergent scrub-shrub wetlands running across its entire 230-foot width. With the minimum 50-foot wide ESHA buffers applied at the outer edges of these environmentally sensitive areas, only a roughly 3,700-square-foot triangular-shaped area remains along the parcel's eastern side in which the site improvements could be located and be found consistent with the certified LCP's natural resources protection policies.

As detailed further in the Findings Section IV.D below, with very limited exceptions for utility and access connections, these policies and standards effectively prohibit the structures and other appurtenant residential improvements from being developed within both ESHAs and their requisite buffer areas. The Commission further notes that with the acquisition of 7,334 acres of these adjoining forest lands within the lower Big River watershed by the California Department of Parks and Recreation on July 1, 2002 to be managed for fish and wildlife habitat and public recreation uses, the necessity for providing a 200-foot setback to afford a buffer between incompatible timber production and rural residential uses– has been for all intents and purposes alleviated.

Therefore, the Commission finds that as conditioned, the proposed development is consistent with LUP Policies 3.9-1 3.8-1, and with Coastal Zoning Code Sections 20.376 and 20.510.020 as the development will be located in a developed area, there will be adequate services on the site to serve the proposed development, the project will not contribute to significant adverse cumulative impacts on highway capacity, scenic values, or other coastal resources, and no feasible building site exists on the parcel such that a minimum 200-foot-wide buffer could be provided between the proposed new residential dwellings and adjacent designated Forest Lands.

E. Environmentally Sensitive Habitat Areas

1. LCP Provisions

LUP Policy 3.1-4 states:

> *As required by the Coastal Act, development within wetland areas shall be limited to:*
>
> 1. *Port facility construction or expansion, Section 30233(a)(1).*
> 2. *Energy facility construction or expansion, Section 30233(a)(1).*
> 3. *Coastal-dependent industrial facilities such as commercial fishing facilities, construction or expansion, Section 30233(a)(1).*
> 4. *Maintenance or restoration of dredged depths or previously dredged depths in: navigational channels, turning basins, vessel berthing and mooring areas, and associated with boat launching ramps.*
> 5. *In wetland areas, only entrance channels for new or expanded boating facilities may be constructed, except that in a degraded wetland, other boating facilities may be permitted under special circumstances, Section 30233(a)(3). New or expanded boating facilities may be permitted in estuaries, Section 30233(a)(4).*
> 6. *Incidental public services purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
> 7. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
> 8. *Nature study purposes and salmon restoration projects.*
> 9. *Aquaculture, or similar resource dependent activities excluding ocean ranching. (See Glossary)*
>
> *In any of the above instances, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes, shall be permitted in accordance with all other applicable provisions of this plan. Such requirements shall include a finding that there is no feasible less environmentally damaging alternative and shall include mitigation measures required to minimize adverse environmental effects,*

> *in accordance with Sections 30233 and 30607, and other provisions of the Coastal Act.* [citations and parenthetic in original]

LUP Policy 3.1-7 in applicable part states:

> *A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*
>
> 1. *It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
> 2. *It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
> 3. *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution* [emphasis added.]

LUP Policy 3.1-10 states:

> *Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for:*
>
> - *Channelizations, dams, or other substantial alterations of rivers and streams as permitted in Policy 3.1-9;*

- *pipelines, utility lines and road crossings, when no less environmentally damaging alternative route is feasible;*
- *existing agricultural operations;*
- *removal of trees for disease control, public safety purposes, or for firewood for the personal use of the property owner at his or her residence. Such activities shall be subject to restrictions to protect the habitat values* [emphasis added.]"

LUP Policy 3.1-24 states:

> *Any development within designated resource areas, if not specifically addressed by other policies, shall be carefully reviewed and established in accord with conditions which could allow some development under mitigating conditions but would assure the continued protection of the resource.* [emphasis added]

LUP Policy 3.1-29 states:

> *The California Department of Fish and Game, the California Native Plant Society, and the U.S. Fish and Wildlife Service shall be requested to maintain and augment mapped inventory of all rare, endangered, threatened and protected plant and wildlife habitats on the Mendocino Coast based on up-to-date survey information. Symbols indicating rare or endangered plants and wildlife are placed on the Land Use Maps to generally locate listed species and will be pinpointed as necessary to prevent degradation prior to issuing any development permit. Furthermore, the Department of Fish and Game is requested to work with the county during the planning and permit process to evaluate the significance of mapped sites as they apply to individual development applications.*

Section 20.308.040(F) of the Mendocino County Coastal Zoning Code (CZC) defines the term "environmentally sensitive habitat area" as follows:

> *'Environmentally Sensitive Habitat Area' means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities or developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals.*

CZC Section 20.302.130(E) defines wetlands as:

> *'Wetlands' means lands covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water*

marshes, swamps, mudflats, and fens. Wetlands are extremely fertile and productive environments. Tidal flushing from the ocean and/or nutrient-rich freshwater runoff mix to form a delicate balance responsible for their productivity. They function as nurseries for many aquatic species and serve as feeding and nesting areas for water fowl, shore birds and wading birds, as well as a few rare and endangered species such as the peregrine falcon.

CZC Section 20.496.010 states in applicable part:

Purpose.
The purpose of this Chapter is to ensure that environmentally sensitive habitat and other designated resource areas listed on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985, which constitute significant public resources are protected for both the wildlife inhabitating them as well as the enjoyment of present and future populations.

Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals."

CZC Section 20.496.020 states in applicable part:

ESHA- Development Criteria

(A) Buffer areas. A buffer shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.

(1) Width.

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. …Standards for determining the appropriate width of the buffer area are as follows:

(a) Biological Significance of Adjacent Lands. Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they

are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

(b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:

(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;
(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;
(iii) An assessment of the impact and activity levels of the proposed development on the resource.

(c) Susceptibility of Parcel to Erosion. The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.

(d) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.

(e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of

roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.

(f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

(g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area.

(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).

(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.

(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the

maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system whenever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel

to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats.

CZC Section 20.496.035 states in applicable part:

Riparian Corridors and other Riparian Resource Areas.

(A) No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:

(1) Channelizations, dams or other alterations of rivers and streams as permitted in Section 20.496.030(C);
(2) Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;
(3) Existing agricultural operations;
(4) Removal of trees for disease control, public safety purposes or personal use for firewood by property owner.

(B) Requirements for development in riparian habitat areas are as follows:

(1) The development shall not significantly disrupt the habitat the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;
(2) No other feasible, less environmentally sensitive alternative exists;
(3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;

Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent. [emphasis added.]

CZC Sec. 20.496.050 states:

> *(A) General. Other designated resource areas as identified on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985 include: State parks and reserves, underwater parks and reserves, areas of special biological significance, natural areas, special treatment areas, fishing access points, areas of special biological importance, significant California ecosystems and coastal marine ecosystems.*
>
> *(B) Development of Resource Areas. Any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area.* [emphases added]

2. Discussion

The subject property is situated on a middle Quaternary-aged uplifted coastal terrace vegetated by two plant communities. First, a mixture of native and exotic grasses and shrubs covers most of the open terrace area of the site that was originally vegetated with North Coast Coniferous Forest, but was subjected to timberland harvesting and conversion activities (i.e., grading for log landings and stump clearing) activities several decades ago. Remnants of the original vegetation that covered the whole of the parcel are still present at the site as part of the streamside corridor along the northwestern side of the parcel upon which the house would be developed and on the adjoining parcel to the east, where the septic system leach field would be installed. This stream is a small, unnamed intermittent drainage course that traverses the site from its north apex to the southwest. A riparian plant community extends along the immediate banks of the stream.

The applicants' botanist, Gordon McBride, Ph.D., conducted a botanical survey of the subject parcel and submitted an initial report dated July 5, 2000 as well as several subsequent reports to the County during its review of the project (see Exhibit No. 8). The initial report identified a riparian plant community along the stream. A reduced-width fifty-foot-wide setback between the proposed residence and the outer edge of the riparian vegetation was proposed.

Pursuant to the requirements of LUP Policy 3.1-7 and CZC Section 20.496.020(A)(1), on January 7, 2002, Dr, McBride provided a supplemental analysis of the adequacy of the less-than-100-foot-wide buffer area to protect the riparian corridor (see Exhibit No. 8). This evaluation concluded that given the non-anadromous, seasonal nature of the drainage course, the actual and potential habitat utilization within the vegetated riparian corridor, and the scope and extent of the proposed development, reducing the buffer from a default 100-foot-width to the proposed 50-feet would still provide adequate protection to this environmentally sensitive area as required by the certified LCP.

The Commission also notes that in his earlier July 5, 2000 report Dr. McBride also disclosed that Bolander's Reed Grass (Calamagrostis bolanderi) had been found on the project site growing in a linear outcropping from the riparian corridor to down along the eastern side of the property (see map illustrations within Exhibit Nos. 8 and 9). At the time of Dr. McBride's report, Bolander's

Reed Grass appeared on "List 1B" of the California Native Plants Society's (CNPS) Inventory of Rare and Endangered Plants of California - Sixth Edition. Given this listing's significance as a threshold for determining the relative significance of potentially adverse impacts on biological resources and for setting requirements for formulating related mitigation and monitoring programs, the outcroppings of Bolander's Reed Grass and the area in which they are growing met the LCP's definition of an ESHA as they were both: (1) "*an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem;*" and (2) "*which could easily be disturbed or degraded by human activities or developments*."

However, since the preparation of Dr McBride's buffer needs assessment, the status of Bolander's Reed Grass has been re-assigned by the CNPS to "List 4" species status, reflective of the receipt of new information indicating that the plant is not as restricted in range and discrete populations as was previously concluded. As such, the plant would no longer meet the first prong of the LCP's ESHA definition.

At the time of the Commission's action on the appeal of the County's conditional approval of the project, Bolander's Reed Grass appeared on the California Native Plants Society's (CNPS) "List 1B," as a rare plant species vulnerable under present circumstances or to have a high potential for becoming so because of its limited or vulnerable habitat, its low numbers of individuals per population (even though they may be wide ranging), or its limited number of populations. Consequently, the plant met the definition as a "threatened" or "endangered" species and at that time was eligible for listing as such under the California Endangered Species Act (CESA). Additionally, given this status, the plant and the area in which it grows also met the definition within the County of Mendocino's LCP for an "environmentally sensitive habitat area," and was thus subject to the protections enumerated therein (i.e., providing adequately wide buffer areas from development and other similar preclusions).

Since the Commission's Substantial Issue determination in May 2002, Bolander's Reed Grass has been downgraded by the CNPS to "List 4" status, reflecting the receipt of additional botanical field data which found the plant to be in greater population occurrence and range than had been previously thought. CNPS List 4 is effectively a "watch list," comprising those rare plants which are of limited distribution or infrequent throughout a broader area in California, and their vulnerability or susceptibility to threat appears relatively low at this time. These plants cannot be considered "rare" from a statewide perspective and therefore are not eligible for CESA candidacy as a "threatened" or "endangered" species. As a result, with the re-listing of Bolander's Reed Grass from a designation associated with critical concerns regarding possible and eventual extirpation to one which is effectively an advisory ranking, the plant and its habitat no longer meet the LCP's definition of a "environmentally sensitive habitat area" for purposes of implementing the LCP's ESHA policies (i.e., restrictions on development within ESHAs, provision of adequately-wide buffer areas between development and ESHAs).

Also, subsequent to the Commission's determination that Appeal No. A-1-MEN-02-019 raised a substantial issue of conformance with the certified LCP in May 2002, a field visit to the project parcel by Commission staff revealed the presence of potential wetland areas on a portion of the

site that had not been previously considered either by the County or the Commission. In August 2003, a wetlands delineation and buffer analysis was prepared by Wetlands Research Associates, Inc. for the project site. The investigation found that an approximately 4,700-square-foot area on the parcel contains a prevalence of hydrophytic vegetation and meets the LCP's definition of wetlands. The report went on to analyze the buffer needed to protect this habitat area, concluding that a 25-foot-wide buffer is adequate to protect this environmentally sensitive area from the proposed development (see Exhibit No. 9).

LCP Provisions for Reduced-Width ESHA Buffers

As set forth above, LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020 require that buffer areas shall be established adjacent to all environmentally sensitive habitat areas to provide sufficient area to protect the environmentally sensitive habitat from significant disruption resulting from future developments. These provisions of the LCP state that the width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation with the California Department of Fish and Game, and County Planning staff, that one hundred feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development, in which case the buffer can be reduced to not less than fifty (50) feet in width.

CZC Section 20.496.020(A)(1)(a) through (g) sets forth specific standards to be considered when determining the width of a buffer. These standards include: (a) an assessment of the biological significance of adjacent lands and the degree to which they are functionally related to wetland resources; (b) the sensitivity of species to disturbance such that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development; (c) the susceptibility of the parcel to erosion determined from an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel; (d) the use of natural topographic features to locate development so that hills and bluffs adjacent to ESHA's can be used to buffer habitat areas; (e) use of existing cultural features such as roads and dikes to buffer habitat areas; (f) lot configuration and location of existing development such that buildings are a uniform distance from the habitat area, and provision for additional mitigation if the distance is less than 100 feet; and (g) the type and scale of development proposed as a determining factor for the size of the buffer zone necessary to protect the ESHA.

As noted above, because of the riparian vegetation corridor and wetland habitat on the site, the required septic system setbacks from a community water system wellhead, and the minimum required yard areas, development options are so constrained that it would not be feasible to develop even a small house on the property and maintain a minimum 100-foot buffer from all environmentally sensitive habitat areas. As noted above, the ESHA buffer may be reduced to 50 feet when the applicant presents appropriate evidence demonstrating that based on a review of the buffer width standards set forth in Coastal Zoning Code Section 20.496.020(A)(1), a narrower buffer would still protect the ESHA from significant disruption, and when the California Department of Fish & Game agrees. Even where it is not appropriate to reduce the minimum buffer, limited development may still be approved within the buffer pursuant to LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4) if it can be demonstrated that: (a) the development is generally the same as those uses permitted in the adjacent ESHA; (b) it will be

sited and designed to prevent impacts which would significantly degrade such areas; (c) it will be compatible with the continuance of such habitat by maintaining the habitat's functional capacity and its ability to be self-sustaining and to maintain natural species diversity; and (d) there is no other feasible site available on the parcel and mitigation measures will be implemented to replace the protective values of the buffer area.

Consistent with the standards contained within CZC Section 20.496.020(A)(1)(a) through (g), the applicant provided supplemental evaluations of the width of the buffer needed to protect the riparian vegetation and wetland ESHAs as requested by the Commission for purposes of the Commission's *de novo* review of the proposed project (see Exhibit Nos. 8 and 9).

Adequacy of Proposed Reduced-width Riparian Vegetation Buffer

Gordon McBride PhD, in conjunction with consulting biologist Theodore W. Wooster Wetlands Research Associates, Inc. (WRA) developed a peer-reviewed supplemental evaluation of the riparian buffer width requirements to adequately protect the riparian resources on the site, considering the following seven standards in arriving at their recommendation of a 50-foot buffer:

(1) Biological Significance of Adjacent Lands.

In order to assess the biological significance of lands adjacent to the delineated riparian corridor, Dr. McBride conducted a reconnaissance for the presence of sensitive plants and wildlife on the property. No listed or sensitive plants were found within any portion of the property. No fish or migratory waterfowl use the seasonal watercourse area. According to Dr. McBride, one would expect the primary inhabitants of the intermittent drainage course and adjoining area to be insects, passerine bird species, and small mammals. Terrain adjoining the drainage course is heavily vegetated, and surface water is generally not present for significant portions of the year. The herbaceous nature of the vegetation limits nesting opportunities for birds. The density of the vegetation on the site provides sufficient cover for those animals that do utilize this area such that visual disturbances associated with the proposed residential use of the property would not present a significant impact. For these foregoing reasons, Dr. McBride concluded that the biological relationship of the adjoining terrain to the riparian corridor is not significant, and the habitat requirements of species likely to use the riparian corridor and adjoining areas are consistent with a reduced buffer.

(2) Sensitivity of Species to Disturbance.

Doctor McBride and Mr. Wooster also examined the distance necessary to ensure that the most sensitive species of plants and animals would not be disturbed by the permitted development in a significant way. Dr. McBride noted that with the exception of the then endangered/threatened species candidate eligible Bolander's Reed Grass, he was not aware of any sensitive plant species on the site that would be susceptible to human activity. Mr. Wooster similarly concluded that a reduced-width 50-foot riparian vegetation buffer would suffice to provide adequate protection to the urban fringe-

accustomed species that would most likely utilize this wooded intermittent stream for habitat.

The impact to wildlife species would be less than significant because as discussed above, the density of the vegetation in the area provides sufficient cover for those animals that utilize the wetland and adjoining terrain, and nesting and breeding habitat is limited given the herbaceous structure of the wetland area. Additionally, in evaluating the adequacy of the proposed 50-foot riparian corridor buffer, Dr. McBride and Mr. Wooster assessed the short-term and long-term adaptability of various species to human disturbance, and found that since the subject property is the last lot to be developed within the existing Big River-Van Meter rural residential area, the type of wildlife that may use this area are likely to be adapted to human presence. Non-native, invasive species such as pampas grass and Scotch broom have been present on the property for many years. Because the proposed development would be located between existing residential structures on adjacent properties, and because the northwestern and southwestern portions of the property would be protected as delineated riparian corridor and wetland, the impacts of development would be located near areas already subject to human disturbance.

Finally, in order to further assess the sensitivity of species to disturbance, Dr. McBride and Mr. Wooster evaluated the impact and activity levels of the proposed development. The proposed development is limited to one building and a graveled parking and access drive for the purpose of maintaining a single-family residential use. Activities that would occur within this residence are similar to the existing residential homes in this neighborhood. This use would not result in any significant change in land use practices nor would there be any significant change in use patterns for the neighborhood. Dr. McBride and Mr. Wooster concluded that in relation to potential significant adverse impacts resulting from increased activity levels, the proposed 50-foot wetland buffer would be adequate to protect the wetland.

(3) Susceptibility of Parcel to Erosion.

Dr. Mc Bride considered the susceptibility of the subject parcel to erosion in determining that a 50-foot buffer would be sufficient to protect the riparian corridor from impacts resulting from the proposed development. The proposed house, parking area, and access drive would be developed downslope from the riparian corridor. No erosion is anticipated on this relatively flat parcel as a result of constructing the development associated with the proposed single-family residence. Therefore, Dr. McBride believes that significant adverse impacts to the delineated wetland from erosion resulting from the proposed development is very unlikely.

(4) Use of Natural Topographic Features to Locate Development.

Dr. McBride evaluated natural topographic features located on the property in recommending the 50-foot buffer. Dr. McBride recognized that with the exception of areas directly adjoining the seasonal drainage course, the property slopes gently toward

the southwest, to the lowest portion at the southwest corner. The riparian corridor is generally contained by a cleft uphill and to the north and west of the proposed building envelope. Along the property boundary to the west, the drainage course is separated from the proposed residential structures by a slight topographic rise. The house, parking area, and driveway would be located in the central slightly downhill portion of the property. Therefore, the natural topography would cause storm water runoff from the proposed development to flow away from the stream. Therefore, the proposed 50-foot riparian buffer conforms to natural topographic features of the property and would use natural topographic features in a way that would avoid significant adverse impacts to the riparian corridor from the proposed development.

(5) Use of Existing Cultural Features to Locate Buffer Zones.

In evaluating the adequacy of the buffer width, Dr. McBride considered whether any existing cultural features within the proposed 50-foot buffer could be utilized to protect the riparian corridor and thus support use of the proposed 50-foot buffer width. The subject property is located along an unnamed private rural road. There are no other roads located within or adjacent to the applicant's approximately 1¼-acre parcel. The proposed development would occur adjacent to neighboring structures that exist on parcels to the south and to the north. On the subject parcel, near its northern apex is an existing community water system well. There are no other cultural features that occur on or near the subject property, which could be used to better ensure protection for the riparian area.

(6) Lot Configuration and Location of Existing Development.

Dr. McBride evaluated the width of the proposed buffer in relation to the subject parcel configuration and to the proximity of existing development in the vicinity. As discussed above, the proposed development would be within an existing rural residential developed area. The subject parcel would be the last to be developed in the Big River-Van Meter rural residential neighborhood. Because the area on the parcel available for development is constrained by the presence of the riparian corridor, a delineated wetland, setback requirements from front, rear, and side lot lines and wellheads, the lot configuration and how it affects the location of existing development on the parcel is significant. The applicant has revised the project description to conform to the new wetland delineation and proposed 50-foot reduced-width riparian and wetlands buffers. Dr. McBride believes that the proposed 50-foot buffer would be adequate to protect the riparian corridor resources in relation to the configuration of the parcel, to all existing development located on the parcel, and to the proposed development, and would not result in significant adverse impacts to the delineated wetland.

(7) Type and Scale of Development .

Dr. McBride considered the nature of the delineated wetland resources involved, the fact that adjacent properties have been developed, and the type of development in the vicinity in order to arrive at the recommended 50-foot buffer. As discussed previously, the

development would be limited to a single-family residence, a graveled parking area, an access driveway garage/workshop, and on-site sewage disposal system. All of the other lots in the residential area are completely developed with homes, including expansive driveways, garages, and lawns. For the applicant's parcel, the intensity of use is limited and within the character of the existing residential community. The riparian corridor and wetland buffers effectively limit development to the central portion of the subject property to about 1/10 of the parcel. The actual area proposed for structures and other improvements on the approximately 1¼-acre parcel is a relatively modest 5,470 square feet, and would represent only about 10% lot-coverage. The remaining 9/10 of the parcel would remain undeveloped. In considering the type and scale of development proposed, Dr. McBride determined that a 50-foot buffer would be adequate to protect the riparian corridor.

The foregoing analysis of the proposed buffer width in relation to the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) provide a basis for determining whether the buffer proposed by Dr. McBride would be adequate to protect the riparian corridor's aquatic and vegetated habitat areas. The particular facts of this site and the proposed development suggest that some of the standards should be weighed more in the evaluation of buffer width than other standards. For instance, the fact that a sensitive plant survey and wildlife survey conducted on the subject property identified no listed or sensitive plants and the intermittent nature of the drainage course weighs more heavily than does the fact that no cultural features could be identified to better ensure protection of the delineated wetland.

Those factors that support the establishment of a 50-foot buffer as adequate to protect the riparian areas include: (1) the lack of listed or sensitive plants on the property; (2) the lack of resident or migratory fish or migratory waterfowl; (3) the fact that terrain adjoining the riparian areas is heavily vegetated and lacks the year-round presence of surface water, (4) the herbaceous nature of the vegetation adjacent to the wetland and its limited nesting opportunity for birds; (5) the fact that the adjoining vegetation is of sufficient density to provide sufficient cover for human activity-desensitized animals that do use the area; (7) the fact that the subject property is the last lot to be developed in the Big River-Van Meter rural residential neighborhood and that the type of wildlife most likely to use the area have already adapted to human presence; (8) the fact that the parcel is only moderately side-sloped and well vegetated, and that the proposed development would not entail significant grading that would cause erosion; and (9) the fact that the riparian drainage corridor is contained in a cleft uphill of the proposed development, which will prevent storm water runoff from the development from degrading the waterway.

To conform to the need to provide an adequate ESHA buffer, the applicant has revised the project description to relocate the proposed development such that it is a minimum of 50 feet from both the edge of the riparian vegetation and the wetlands on the site. The proposed residence would be of modest size, leaving nearly 9/10 of the parcel undeveloped. When considering the totality of all the factors as discussed above, the Commission finds that the applicant's evaluation of the width of the delineated wetland buffer as provided by Dr. McBride, sufficiently demonstrates that no significant adverse impacts will result from the 50-foot recommended buffer width.

Staff of the California Department of Fish and Game (CDFG) conducted a site visit with Commission staff on May 3, 2002, and reviewed the revised riparian habitat assessment and buffer width analysis. CDFG staff has determined that the recommended 50-foot buffer would be an acceptable buffer for this particular project (see Exhibit No. 10). Additionally, CDFG expressed its support for the applicant's proposal to cut and remove from the property all pampas grass (Cortaderia jubata) plants. The removal of these exotics in particular from the project area would greatly enhance the value of the buffers as a transitional zone from riparian and wetland ESHAs to the proposed developed areas by allowing native plants of greater habitat value to wildlife that use both wetlands and adjoining lands to become reestablished.

The applicants' amended application for the hearing *de novo* incorporates the conservation measure to remove exotic vegetation. To ensure that the ESHA buffer is established consistent with the terms under which CDFG determined that the 50-foot buffer would be adequate, the Commission attaches Special Condition No. 2, which requires the applicants to perform the removal of invasive exotic vegetation as recommended by the applicants biologists and CDFG and proposed by the applicants. Based on all of the foregoing, the Commission finds that the proposed 50-foot buffer between the proposed development and the riparian ESHA on the site in conjunction with the requirements of Special Condition No. 2 to remove invasive exotic vegetation will adequately protect the riparian ESHA and is consistent with the buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4).

Adequacy of Proposed Reduced-width Wetlands Buffer

Similarly for the wetlands ESHA, Wetlands Research Associates, Inc. (WRA) performed the supplemental evaluation for determining the buffer width that would adequately protect the wetland areas on the parcel. WRA considered the following seven standards in arriving at their recommendation of a 25-foot buffer:

(1) Biological Significance of Adjacent Lands.

To assess the biological significance of lands adjacent to the delineated wetland, WRA conducted a sensitive plant survey and wildlife survey on the subject property. No listed or sensitive plants were found within any portion of the property. No fish or migratory waterfowl use the wetland area. One would expect the primary inhabitants of the wetland and adjoining area to be insects, passerine bird species, and small burrowing mammals. Terrain adjoining the wetland swale is heavily vegetated, and surface water is generally not present. The herbaceous nature of the vegetation limits nesting opportunities for birds, and during the daylong visit to the property on June 20, 2003, WRA did not detect any birds actually using the wetlands. The density of the vegetation on the site provides sufficient cover for those animals that do utilize this area such that visual disturbances associated with the proposed residential use of the property would not present a significant impact. For these foregoing reasons, WRA believes that the biological relationship of the adjoining terrain is not significant, and the habitat requirements of

species likely to use the delineated wetland and adjoining areas are consistent with a reduced buffer.

(2) Sensitivity of Species to Disturbance.

WRA also examined the distance necessary to ensure that the most sensitive species of plants and animals would not be disturbed by the permitted development in a significant way. In considering the nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species, WRA noted that no resident or migratory fish are present. Although wildlife may forage in the wetland area, nesting and breeding habitat is limited given the herbaceous structure of the wetland. Because no resident or migratory fish are present on the subject property, there will be no impact on the nesting, feeding, breeding, resting or other habitat requirements resulting from the proposed reduction of wetland buffer to 50 feet. The impact to wildlife species would be less than significant because as discussed above, the density of the vegetation in the area provides sufficient cover for those animals that utilize the wetland and adjoining terrain, and nesting and breeding habitat is limited given the herbaceous structure of the wetland area.

In evaluating the adequacy of their proposed reduced-width wetland buffer, WRA also assessed the short-term and long-term adaptability of various species to human disturbance, and found that since the subject property is the last lot to be developed within the existing Big River-Van Meter rural residential area, the type of wildlife that may use this area are likely to be adapted to human presence. Non-native, invasive species such as pampas grass and Scotch broom have been present on the property for many years. Because the proposed development would be located between existing residential structures on adjacent properties, and on the southern portion of the subject property near the road, and because the northern portion of the property would be protected as delineated wetland, the impacts of development would be located near areas already subject to human disturbance.

Finally, to further assess the sensitivity of species to disturbance, WRA evaluated the impact and activity levels of the proposed development. The proposed development is limited to two buildings for the purpose of constructing and maintaining a single-family residence. Activities that would occur within this residence are similar to the existing residential homes in this neighborhood. This use would not result in any significant change in land use practices nor would there be any significant change in use patterns for the neighborhood. WRA concluded that in relation to potential significant adverse impacts resulting from increased activity levels, the proposed reduced-width wetland buffer would be adequate to protect the wetland.

3) Susceptibility of Parcel to Erosion.

WRA considered the susceptibility of the subject parcel to erosion in determining that a reduced-width wetland buffer would be sufficient to protect the delineated wetland from

impacts resulting from the proposed development. Although the proposed house, parking area, and access driveway would be developed upslope from the delineated wetland, no erosion is anticipated on this relatively moderately sloped parcel as a result of grading and construction associated with the proposed single-family residence. Therefore, WRA believes that significant adverse impacts to the delineated wetland from erosion resulting from the proposed development is very unlikely.

4) Use of Natural Topographic Features to Locate Development.

WRA evaluated natural topographic features located on the property in recommending a reduced-width wetland buffer. WRA recognized that the property is only moderately sloped. The majority of property, especially the areas proposed for development, slopes gently toward the southwest, with a drop of about thirty feet from the highest portion at the northeast corner, to the lowest portion at the southwest corner. The wetland is generally contained by a seep-like depression downhill and to the south and west of the proposed buildings. Along the property boundary to the west, the swale is separated from the proposed residential structures by a slight topographic rise. The house and parking area would be located in the eastern-central portion of the property, and the driveway would traverse the full width of parcel at its narrowest point, running north and upslope of the wetland area from the existing road frontage along the west side of the property to its east side. Therefore, the natural topography would cause storm water runoff from the proposed development to flow toward the wetlands.

Although the runoff effects from the driveway and parking area would be somewhat minimized by the applicants' proposed use of a permeable gravel surface for these improvements, impact to the wetlands from unchecked runoff originating from the approximately 3,100-square feet of impervious roofing and decking areas could be significant. Therefore, provided the mitigation measures identified within the WRA report are incorporated as project performance standards, the reduced-width wetland buffer proposed by WRA would conform to natural topographic features of the property and would use natural topographic features in a way that would avoid significant adverse impacts to the delineated wetland from the proposed development.

5) Use of Existing Cultural Features to Locate Buffer Zones.

In evaluating the adequacy of the buffer width, WRA considered whether any existing cultural features within the proposed 50-foot buffer could be utilized to protect the wetlands. The subject property is located along an unnamed private rural road, approximately 1/8 mile beyond the end of the public road that serves the adjoining Big River Subdivision. There are no other roads located within or adjacent to the applicant's approximately 1¼-acre parcel. The proposed development would occur adjacent to neighboring structures that exist on parcels to the north, south, and west. On the subject parcel there is a community water system wellhead and storage tank. There are no other cultural features that occur on or near the subject property, which could be used to better ensure protection for the delineated wetland.

6) Lot Configuration and Location of Existing Development.

WRA evaluated the width of the proposed buffer in relation to the subject parcel configuration and to the proximity of existing development in the vicinity. As discussed above, the proposed development would be within an existing residential development. The subject parcel would be the last lot to be developed in the Big River-Van Meter rural residential neighborhood. Because the area on the parcel available for development is constrained by the presence of the delineated wetland and adjoining riparian habitat areas, front, rear, and side yard setbacks, the presence of a 200-foot-radius sewage disposal exclusion area around the community well, and given the lot configuration and the limitations of the location for potential development on the parcel is significant. Notwithstanding these limitations, all portions of the house, the decking, and the parking area would be a minimum of 50 feet from the delineated wetland. The house and parking areas would be located very close to the required setback limits for rear yards. The applicant has revised the project description to conform to the new expanded wetland delineation and proposed buffer. WRA believes that a reduced-width buffer would be adequate to protect the delineated wetland in relation to the configuration of the parcel, the location of all existing development on the parcel, and the location of the proposed development, and would not result in significant adverse impacts to the delineated wetland.

7) Type and Scale of Development .

WRA considered the nature of the delineated wetland resources involved, the fact that adjacent properties have been developed, and the type of development in the vicinity in order to arrive at the recommended reduced-width buffer. As discussed previously, the development would be limited to a single-family residence and a gravel-surfaced parking area and driveway. All of the other lots in the residential area are completely developed with homes, including expansive driveways, garages, and lawns. For the applicants' parcel, the intensity of use is limited and within the character of the existing rural residential community. The delineated wetland and protective buffer-width effectively limit development to the eastern-central portion of the subject property. The actual area proposed for structures on the approximately 1¼-acre parcel is a relatively modest 5,470 square feet, and would represent only about 10% lot-coverage. The remaining 9/10 of the parcel would remain undeveloped. In considering the type and scale of development proposed together with the small size and isolated nature of the subject environmentally sensitive area, WRA determined that a reduced-width buffer would be adequate to protect the delineated wetland.

The foregoing analysis of the proposed buffer width in relation to the seven standards contained within Coastal Zoning Code Section 20.496.020(A)(1)(a) through (g) provide a basis for determining whether the buffer proposed by WRA would be adequate to protect wetland resources as delineated. The particular facts of this site and the proposed development suggest that some of the standards should be weighed more in the evaluation of buffer width than other

standards. For instance, the fact that a sensitive plant survey and wildlife survey conducted on the subject property identified no listed or sensitive plants, and no resident or migratory fish or migratory waterfowl use of the property, weighs more heavily than does the fact that no cultural features could be identified to better ensure protection of the delineated wetland.

Those factors that support the establishment of a reduced-width buffer as adequate to protect the delineated wetland include: (1) the lack of listed or sensitive plants on the property; (2) the lack of resident or migratory fish or migratory waterfowl; (3) the fact that no birds were seen using the delineated wetland during site visits; (4) the fact that terrain adjoining the wetland is heavily vegetated and lacks the presence of surface water; (5) the herbaceous nature of the vegetation adjacent to the wetland and its limited nesting opportunity for birds; (6) the fact that the adjoining vegetation is of sufficient density to provide sufficient cover for animals that do use the area; (7) the fact that the subject property is the last lot to be developed in the neighborhood and the type of wildlife most likely to use the area have adapted to human presence; (8) the fact that the parcel is relatively flat and well vegetated and development would not entail significant grading so that no erosion is anticipated; and (9) the fact that the delineated wetland is relatively small and isolated.

As mentioned under some of the above-listed factors for determining an appropriate wetlands buffer width, the adequacy of WRA's reduced-width buffer was based upon the inclusion of numerous mitigation and monitoring provisions within the project. This mitigation program included:

- Maintaining a minimum of a 50-foot-wide buffer between the riparian habitat and the development (except where the proposed driveway enters the site from the existing access road.) Additionally, the driveway should be surfaced with clean aggregate material (rock gravel) rather than being paved;

- Prohibiting the placement or construction of any structures within the reduced buffer areas that would alter the existing hydrology of the area (i.e., result in cutting off the surface and subsurface flows of water from the riparian corridor into the wetland area.);

- Planting native shrubs (e.g., California wax-myrtle or California blackberry) in the reduced-width buffer zone between the development and the wetland habitat area following construction;

- Avoiding undue soils disturbance, grading, or soil or building material storage in the areas on the parcel inhabited with Bolander's Reed Grass;

- Restricting soils grading activities to the drier-months period between May 1 and October 31 to reduce soil erosion and sedimentation of wetland areas;

- Installing temporary silt fencing along the limits of the area disturbed by construction activities;

- Minimizing soil disturbances within the buffer areas as much as is possible;

- Prohibiting the storage of any solid building materials or equipment, concrete delivery vehicle wash-out, the disposal of solid waste, or the release of any hazardous materials in the reduced-width buffer area, and cleaning up and restoring any area where an accidental spill of such materials has occurred; and

- Removing the exotic, invasive Scotch broom and pampas grass from the parcel.

Although the WRA analysis resulting in a determination that a 25-foot wide wetland buffer, together with certain specified mitigation measures would be sufficient to protect the wetlands on the site, the LCP does not provide for reducing the width of an ESHA buffer to such a proposed width. CZC 20.496.020(A)(1) specifically states, "*The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width.*" [emphasis added] Moreover, pursuant to the standards within CZC 20.496.020(A)(4), allowable further encroachment by development within a wetland buffer area is limited to certain qualified uses and activities that: (1) would be allowed within a wetland ESHA proper; (2) are clearly demonstrated to be designed and sited where the biological integrity of the resource would be protected; and (3) in the case of structural development, is only authorized if there are no other feasible locations outside of the buffer area.

To conform to the need to provide an ESHA buffer that would be both adequately protective of this environmentally sensitive area and meet the LCP's minimum width requirements, the applicant has revised the project description to relocate the proposed development a minimum of 50 feet from the outer edge of the delineated wetlands. The proposed residence would be of modest size, located near existing development, leaving more than 9/10 of the parcel undeveloped. When considering the totality of all the factors as discussed above, the Commission finds that the applicant's evaluation of the width of the delineated wetland buffer as provided by WRA, sufficiently demonstrates that no significant adverse impacts will result from the 50-foot recommended buffer width.

Staff of the California Department of Fish and Game (CDFG) visited the site on May 3, 2002, and reviewed the revised wetland delineation and buffer width analysis, and determined that the recommended 50-foot buffer adjacent to the riparian ESHA would be an acceptable wetland buffer for this particular project (see Exhibit No. 10). Additionally, CDFG expressed its support for the applicant's proposal to cut and remove from the property all Scotch broom and pampas grass plants. The removal of these exotics in particular from the project area would greatly enhance the value of the buffers as a transitional zone from riparian and wetland ESHAs to the proposed developed areas by allowing native plants of greater habitat value to wildlife that use both wetlands and adjoining lands to become reestablished. In consultations with Commission staff CDFG has also indicated that a 50-foot buffer adjacent to the wetland ESHA found on the site would be acceptable.

The applicant has included in the amended application for the Commission's hearing *de novo* their offer to incorporate the recommended removal of exotic vegetation. To ensure that the

ESHA buffer is established consistent with the terms under which CDFG determined that the 50-foot buffer would be adequate, the Commission attaches Special Condition No. 2, which requires the applicant to include the mitigation measures identified in the WRA study, including the removal of invasive exotic vegetation as recommended by CDFG and the wetlands biologist, and proposed by the applicant. In addition, the Commission attaches Special Condition No. 4, requiring the applicants to record a deed restriction detailing the specific development authorized under the permit, identifying all applicable special conditions attached to the permit, and providing notice to future owners of the terms and limitations placed on the use of the property.

Permissible Development within ESHA Buffers

Although all portions of the house, decking, and parking area would be located outside of the minimum 50-foot-wide riparian and wetland buffers, the driveway to the parking area will, by necessity, need to cross through one of these areas. The applicants also propose to provide utility service for the new residential development by extending existing utility lines from the private road frontage to the proposed building site. The specific locations for the proposed driveway and utilities are not specified in the amended application.

LUP Policy 3.1-7 allows development within buffer areas for the same uses that would be permitted in the adjacent ESHA, provided: (1) the development is sited and designed to prevent impacts which would significantly degrade such areas; (2) its is compatible with the continuance of such habitat areas by maintaining their functional capacity and ability to be self-sustaining and to maintain natural species diversity; and (3) no other feasible site is available and mitigation is provided. Pipelines, utility lines and road and trail crossings are expressly allowed within riparian ESHA by LUP Policy 3.1-10 and CZC Section 20.496.035 when no less damaging route is feasible. However, such uses are not specifically enumerated in Policy 3.1-4 as allowable uses within wetland ESHA.

Locating the driveway and utilities within the riparian ESHA buffer area but outside all ESHA and any wetland ESHA buffer would meet the requirements of LUP Policy 3.1-7 and CZC Section 20.496.020 in that: (a) although the driveway will be a permanent development serving the new residential development, the accessway will be constructed with a permeable gravel surface that will allow for infiltration of precipitation, and not otherwise significantly alter the hydrology of the site; (b) the driveway and utilities do not represent structures intended for on-going human occupancy where such activities or human presence could further degrade the protection afforded by the buffer; (c) the driveway and utilities would pass through a relatively open, gently sloped area that would not require the removal of major vegetation or extensive grading; (d) provided the utilities are routed along the side of the driveway, additional disruption of new ground and vegetation that would result from placing the utility lines in another location would be avoided; and (e) as there are no other feasible locations for the driveway and utilities that would not otherwise encroach into the riparian and wetlands ESHA or their buffer areas, or require the applicants to secure substantial additional rights-of-way through adjoining properties for these improvements than they currently possess, routing the driveway and utilities through the riparian ESHA buffer would be the most feasible and least environmentally-damaging alternative.

For these reasons, the installation of driveway and the utility lines within the riparian ESHA buffer as conditioned to be located outside of all ESHA and any wetland ESHA buffer, avoid sedimentation impacts to the ESHA on the property, prevent the spread to invasive plants, and be co-located so as to minimize the area of ground and habitat disruption is consistent with the standards of LUP Policy 3.1-7 and CZC Sections 20.496.020 and 20.496.035 for allowing development within ESHA buffers. Therefore, Special Condition No. 1 requires the submittal of final plans for the review and approval of the Executive Director that show the driveway and utilities routed through the riparian ESHA buffer and outside of all ESHA and any wetland ESHA buffer.

Preventing Degradation of ESHA by Invasive Plants

Landscaping of the residential development is proposed. To ensure that no invasive exotic vegetation is planted at the site that could spread into the ESHAs and significantly disrupt the value of the rare plant conservation area or the other protected riparian and wetland habitat areas, the Commission imposes Special Condition No. 2, requiring the preparation of a landscaping plan to protect biological resources on the site, including requirements that all Scotch broom and pampas grass be initially removed from the project site and no invasive exotic plants be planted.

Protection of Other Designated Resource Areas (State Parks and Reserves, and Special Treatment Areas)

CZC 20.496.050(B) requires that any development within designated resource areas such as state parks and reserves, and special treatment areas, shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area.

The proposed project includes the development of an individual onsite "Wisconsin mound" sewage disposal leachfield on property immediately adjacent to the applicants' parcel. At the time of the securement of an easement by the applicants to develop the sewage disposal facility, the property was owned by Georgia-Pacific Corporation. In March 2002, this forestland property was purchased as part of the "Big River Acquisition" and became part of the California State Parks system.

With respect to conformance of the proposed development with the requirements of CZC 20.496.050(B), the project has been reviewed and considered by a variety of resource agencies, including the County of Mendocino's Public Health Department's Division of Environmental Health, the California Department of Fish and Game, the California Department of Forestry and Fire Protection, and the California Department of Parks and Recreation in regard to the potential effects that the development and on-going maintenance of the mound disposal field would have on this forested parkland area. Based upon CDPR's current plans to maintain the lands adjacent to the project site primarily as wildlife habitat open space and watershed buffer to the Big River with no intention to develop trails or other recreational facilities in this area, no impacts associated with the leachfield or its maintenance have been identified that would necessitate the application of any additional constraints or mitigation measures to protect this designated resource area.

Conclusion

As conditioned to: (1) establish adequately wide buffers to protect the riparian and wetland ESHAs; (2) limit development within the 50-foot riparian buffer area to only uses allowable under the LCP buffer policy and development that would not significantly disrupt the habitat value of ESHA resources; and (3) include specific mitigation measures to further protect the environmentally sensitive areas from the construction and uses associated with the residential development, including the removal of existing exotic/invasive plants and prohibiting the introduction or further spreading of invasive exotic species, the Commission finds that the project as proposed and conditioned will protect the ESHAs on the property consistent with LUP Policies 3.1-7 and 3.1-10 and with Coastal Zoning Code Sections 20.496.010, 20.496.020, 20.496.035, and 20.496.050.

F. Stormwater and Drainage.

1. LCP Provisions

LUP Policy 3.1-25 states:

> *The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and, where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.*

CZC Section 20.492.020 incorporates sedimentation standards and states in part:

> *A. Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with initial grading operations and maintained through the development/construction process to remove sediment from runoff wastes that may drain from land undergoing development to environmentally sensitive areas.*
>
> *B. To prevent sedimentation of off-site areas, vegetation shall be maintained to the maximum extent possible on the development site. Where necessarily removed during construction, native vegetation shall be replanted to help control sedimentation.*
>
> *C. Temporary mechanical means of controlling sedimentation, such as hay baling or temporary berms around the site, may be used as part of an overall grading plan, subject to the approval of the Coastal Permit Administrator.*
>
> *D. Design of sedimentation control devices shall be coordinated with runoff control structure to provide the most protection [emphasis added.]*

Discussion

Storm water runoff from new residential development can adversely affect the biological productivity of coastal waters by degrading water quality. LUP Policy 3.1-25 requires the protection of the biological productivity of coastal waters. Section 20.492.020 of the Mendocino County Coastal Zoning Code sets forth sedimentation standards to minimize sedimentation of environmentally sensitive areas and off-site areas. Specifically, Section 20.492.020(B) requires that the maximum amount of vegetation existing on the development site shall be maintained to prevent sedimentation of off-site areas, and where vegetation is necessarily removed during construction, native vegetation shall be replanted afterwards to help control sedimentation.

As discussed above, the subject parcel is located on a sloping coastal terrace planned and zoned for low-density rural residential development. The unnamed seasonal drainage course along the northwest side of the property and runoff from open portions of the site eventually discharge into the Big River estuary approximately ⅛-mile to the southwest of the project site. Runoff originating from the development site that is allowed to drain off the site to streams and Big River would contain entrained sediment and other pollutants that would contribute to degradation of the quality of coastal waters, including downstream marine waters. Sedimentation impacts from runoff would be of greatest concern during and immediately after construction. Consistent with CZC Section 20.492.020(B), the Commission includes within attached Special Condition No. 1 a requirement that the applicants minimize erosion and sedimentation impacts from the proposed construction of the residence. Special Condition No. 1 requires that the applicants submit for the review and approval of the Executive Director an Erosion and Runoff Control Plan that would provide that: (1) hay bales be installed to contain runoff from construction and demolition areas; (2) on-site vegetation be maintained to the maximum extent possible during construction; (3) any disturbed areas be replanted or seeded with native vegetation following project completion; and (4) runoff from rooks, decks and other impervious surfaces by collected and conveyed to an area on the site where it may infiltrate into the ground and undergo bio-filtration prior to entry into any drainage course or waterway.

The Commission finds that as conditioned, the proposed development is consistent with Section 20.492.020 because erosion and sedimentation will be controlled and minimized by (1) maintaining on-site vegetation to the maximum extent possible; (2) replanting or seeding any disturbed areas with native vegetation following project completion; (3) using hay bales to control runoff during construction, and (4) directing runoff from the completed development in a manner that would provide for infiltration into the ground. Furthermore, the Commission finds that the proposed development as conditioned to require these measures to control sedimentation from storm water runoff from the site is consistent with the provisions of LUP Policy 3.1-25 requiring that the biological productivity of coastal waters be sustained.

G. Visual Resources.

1. LCP Provisions

LUP Policy 3.5-1 states in applicable part:

> *The scenic and visual qualities of Mendocino county coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.*

2. Discussion.

The proposed development includes a 28-foot-high, 1,680-square-foot single-family residence, with a 30′ x 30′ graveled off-street parking area. The development is located in the Van Meter Subdivision, situated approximately ½ mile east of the unincorporated town of Mendocino. The property is not situated within a designated highly scenic area as enumerated within the LCP or appearing as such on its LUP maps. The subject site lies in a grassy opening on a moderately-sloped hillside with scattered tree and shrub cover. Development of the residence will not involve substantial alteration of natural landforms.

Due to its location well inland on a private road, no views to and along the ocean through the project site are available to the public. Further, because of the presence of intervening major vegetation, the site is not visible to motorists traveling northbound on Highway 1. Consequently, there are no views of the site from Highway One or any other public thoroughfare to the west of the subject site. Portions of the site may, however, be visible from watercraft within the Big River estuary or from offshore areas within the Mendocino Headlands State Park, which are popular sea kayaking areas.

With respect to the protection of views to and along the coast, the development of the proposed above-grade structures within the designated building sites has the potential to cumulatively adversely affect such at-sea views through the introduction of an additional structure into the predominantly tree-covered viewshed. Further, as regards the requirement that new development be visually compatible with the character of the surrounding area, depending upon the choice of exterior building materials used in its construction, the resulting residence could dramatically contrast with its forested hillside surroundings.

The proposed 1,680-square-foot, 28-foot-high house would be similar in size and height to other structures in its developed neighborhood. The applicants' agent has indicated that the exterior of the residence and decking will be horizontal cedar clapboard. No specific information was submitted as to whether the siding would be painted. The roof would be covered with Certainteed Independence Shangle®, a one-piece fiberglass shingle underlay with random overlay tabs. No information was provided as to which color of shingle would be used, which range from neutral greys and black, to various greens and browns, to brick-red options. To ensure that the colors of the exterior surfaces of the proposed house will not further impact at-sea

views along the coastline and be compatible with the character of the area, the Commission attaches Special Condition No. 3. This condition imposes design restrictions, including a requirement that all exterior siding and roofing of the proposed structure shall be of natural or natural-appearing materials of dark earthtone colors only; that all exterior materials, including the roof and the windows, shall be non-reflective to minimize glare; and that all exterior lights, including any lights attached to the outside of the house, shall be low-wattage, non-reflective, and have a directional cast downward. As conditioned, the development will blend into its backdrop of trees and will be compatible with the character of the surrounding area.

Special Condition No. 4 further requires that a deed restriction be recorded to ensure that future buyers of the property will be notified that the choice of permissible colors of the structure is limited to better ensure that the development is not painted lighter colors in the future that would not be compatible with its forested hillside surroundings. These requirements will ensure the project remains consistent with the provisions of LUP Policy 3.5-1.

The Commission thus finds that the proposed development, as conditioned, is consistent with LUP Policies 3.5-1, as the project has been conditioned to minimize visual impacts, will be visually compatible with the character of surrounding areas, and will provide for the protection of coastal views.

H. Public Access and Recreation.

1. Coastal Act Access Policies

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

2. LCP Provisions

The Mendocino County LUP includes a number of policies regarding standards for providing and maintaining public access. Policy 3.6-9 states that offers to dedicate an easement shall be required in connection with new development for all areas designated on the land use plan maps. LUP Policy 3.6-27 states that development shall not interfere with the public’s right of access to the sea either acquired by the public at-large, through court decree, or where evidence of historic

public use indicates the potential existence of prescriptive rights of public access. Policy 3.6-28 states that new development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement.

3. Discussion

In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The subject site is located along a private road approximately ¼ mile north of the tidally-influenced reaches of the lower Big River and roughly ½ mile inland from the open coastline. The County's land use maps do not designate the subject parcel for public access. In addition, there does not appear to be any safe or appropriate horizontal access to the dense, brush-covered, public parkland hillsides within the Big River Acquisition area immediately to the east of the site, slated to be managed for wildlife habitat and watershed restoration purposes rather than for public recreational uses.[3] No evidence exists of public prescriptive use of the subject site.

Therefore, the proposed project will not interfere with any possible prescriptive rights. In addition, the proposed project would not otherwise adversely affect public access. The proposed development of one single-family residence would not significantly increase the density of development in the area, and therefore would not create the need for new public access to the shoreline.

Therefore, the Commission finds that the proposed development does not have any significant adverse effect on public access, and the proposed project without new public access, is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212, and the public access policies of the County's certified LCP.

I. California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential

[3] Ron Munson, Acting District Superintendent, California Department of Parks and Recreation – Mendocino District, pers. comm.

significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified LCP, the proposed project has been conditioned to be found consistent with the County of Mendocino LCP and the access and recreation policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been made requirements of project approval. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Excerpt, Land Use Plan Map No. 17 – "Mendocino"
4. Excerpt, Coastal Zoning Map No. 42-F
5. Revised Site Plan, House and Garage Elevations, and Floor Plans
6. Notice of Final Local Action
7. Appeal, filed July 19, 2001 (Hillary Adams, PhD, Sierra Club – Redwood Chapter)
8. Biological Analyses (Gordon McBride, PhD; Theodore W. Wooster)
9. Wetlands Delineation and Buffer Analyses (Wetlands Research Associates, Inc.)
10. Reviewing Agency Correspondence

ATTACHMENT A:

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.